

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ERNIE BABSON

Claimant

VS.

CITY OF HAVEN

Respondent

AND

EMC INSURANCE COMPANY

Insurance Carrier

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Docket No. 258,081

ORDER

Claimant appealed the October 3, 2001 Award entered by Administrative Law Judge Bruce E. Moore. The Board heard oral argument on March 19, 2002.

APPEARANCES

Randy S. Stalcup of Wichita, Kansas, appeared for claimant. James M. McVay of Great Bend, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

Claimant alleges that he developed severe chronic sinusitis requiring surgery from being exposed to dust and vapors while operating a street sweeper commencing the fall of 1998 through the end of his employment with respondent in September 1999. In the October 3, 2001 Award, Judge Moore determined claimant failed to prove "that his rhinitis and sinusitis were caused by his employment" and, "even if causation was established, the record fails to support an Award of permanent partial disability benefits." Accordingly, the Judge denied claimant's request for benefits.

Claimant contends Judge Moore erred. Claimant argues that the testimonies of Dr. Bennett L. Radford and Dr. Daniel D. Zimmerman prove that claimant's sinus condition and resulting surgery were caused by his employment. Moreover, claimant argues he has sustained a 10 percent whole body functional impairment as determined by Dr. Zimmerman. Accordingly, claimant requests the Board to award him a 10 percent permanent partial general disability and medical benefits.

Conversely, respondent and its insurance carrier contend the Award denying benefits should be affirmed. They argue neither Dr. Radford nor Dr. Zimmerman had proper foundations for their opinions. They also argue the opinion of Dr. James H. Ransom that claimant's sinusitis was probably caused by tobacco use is the most persuasive and should be adopted by the Board.

The only issues before the Board on this appeal are:

1. Was claimant's sinusitis caused or contributed to by his employment?
2. If so, has claimant sustained a permanent functional impairment as a result of the sinusitis or resulting surgery?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board concludes that the Award should be affirmed.

For the reasons stated in the Award, the Board concludes that claimant has failed to prove that his sinusitis and resulting surgery were caused or contributed to by his employment with respondent. Accordingly, the issue whether claimant has sustained a permanent functional impairment from the sinusitis or resulting surgery is rendered moot.

AWARD

WHEREFORE, the Board affirms the October 3, 2001 Award entered by Judge Moore.

IT IS SO ORDERED.

Dated this ____ day of March 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Randy S. Stalcup, Attorney for Claimant
James M. McVay, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Workers Compensation Director